

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

NOTICE OF MOTION

-vs-

07-cr-00756 (RJS)

**JOSE FRANCISCO MENDOZA, et al.,
Defendants.**

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PLEASE TAKE NOTICE, that upon the affirmation of Ramon W. Pagan, dated September 20, 2007, and all of the documents attached hereto, a motion will be made, pursuant to 28 U.S.C. § 144, et seq., and 28 U.S.C. § 455(a) and 455(b), for the recusal and/or disqualification of the Honorable Richard J. Sullivan, U.S.D.J. from this matter and all proceedings thereunder, or, in the alternative, that a hearing be granted on the issue, and any further relief this Court deems just and proper.

Dated: Bronx, New York
September 20, 2007

_____/S/_____
Ramon W. Pagan (RP5291)
The Law Office of Ramon W. Pagan
2116 Williamsbridge Road
Bronx, New York 10461
(718) 993-1598

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United States Attorney's Office
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(Via ECF)

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Rosaly Garcia-Guzman

Preliminary Statement

Because of the investigative and prosecutorial history Your Honor has with our office and attorneys associated with our office, we respectfully submit that an objective observer would not believe that Your Honor could be impartial and fair in presiding over this matter. Further, because Your Honor was counsel for the government during the investigation of this matter, recusal is required under Section 455(b).

Statement of Facts

As detailed in the Affirmation of Ramon W. Pagan, Your Honor's extensive prosecutorial and investigative history demonstrate that on numerous occasions, our office was targeted for investigation and possible prosecution, under Your Honor's direction. To begin, Your Honor conducted an extensive investigation of Mr. Pascual Stiso, and in doing so, found that our office had interactions with Mr. Pascual Stiso, and in fact, represented a co-defendant of Mr. Pascual Stiso. When Your Honor investigated and prosecuted Mr. Manuel A. Sanchez, Jr., our name again came up in the investigation materials that we have received, and we subsequently represented Mr. Manuel A. Sanchez, Jr.. We, of course, cannot know precisely the extent of Your Honor's interest or consideration of our office during these investigations, if there was any. But we are aware that the investigation was substantial and wide-ranging, and would be remiss if we did not protect our client's rights for lack of certainty.

Further, as described in the affirmation, our office was searched, and all of the materials therein seized, in or about December of 2002. We again are not aware of the precise involvement Your Honor had, if any, in that investigation, but would not risk bringing up the matter to protect our client's rights.

Finally, the indictment in this matter indicates that the alleged criminal acts occurred from in or about December 2005 to October of 2006. We believe that Your Honor may have still been employed, or had contact with, the United States Attorney's Office for the Southern District at the time that this matter was first being investigated.

For all these reasons, we submit that recusal is appropriate, and, at the least, a hearing should be held to determine all of the relevant facts.

Legal Argument

_____ Under Section 455(a) of Title 28, U.S.C., a court must ask: "would a reasonable person, knowing all of the facts, conclude that the trial judge's impartiality could reasonably be questioned?" United States v. Bayless, 201 F.3d 116, 126 (2d Cir. 2000). The judge's subjective perception of impropriety is not necessary to invoke the statute. See id. A judge who was formerly counsel for the government during an investigation, may be considered counsel under 28 U.S.C. 455(b). Cf. United States v. Thompson, 76 F.3d 442, 450 (2d Cir. 1996). In this matter, Your Honor had investigative encounters with our office, may have in fact overseen the execution of a search warrant on our office, and also may have been counsel for the government during the investigation in this matter. If that much can be said to be true, recusal is the only appropriate action in this matter.

We have reason to believe that Your Honor investigated our office, our interactions with Mr. Pascual Stiso and Mr. Manuel A. Sanchez, Jr., and our dealings with our clients in the time period of 1996 through 2001. The Jencks Act material we received during the trial of Mr. Manuel A. Sanchez, Jr. indicated that our office was discussed with Mr. Pascual Stiso, and that the name of Mr. Ramon Pagan turned up in the sign in sheets for the Metropolitan Detention

Center for people under investigation by Your Honor at that time. We would not presume to know the extent of Your Honor's investigation into our office, but we certainly have reason to believe that there was such an investigation. If that is true, and depending on the extent of Your Honor's investigation, we submit that such would make it very difficult for an objective observer to conclude that Your Honor could be impartial in any matter with this office. Furthermore, our office had substantial dealings with Mr. Manuel A. Sanchez, Jr., to the extent of representing him at trial pro-bono, and in fact moved into the very office in which Your Honor interrogated Mr. Manuel A. Sanchez, Jr. about his dealings with Mr. Pascual Stiso. In or around the time that Mr. Manuel A. Sanchez, Jr.'s case was pending, a search warrant was then executed against our office, and we were subject to innumerable *Curcio* applications by the government, because our office was, apparently, under extensive investigation at that time. It should be noted that no indictment or complaint was ever filed as a result of any of those investigations.

Finally, Your Honor served as counsel for the government in or about the time that the alleged criminal acts in this case occurred. While we are unaware of the specific date of departure from the office by Your Honor, we believe that, depending on when the investigation began, there is a good chance that Your Honor was "counsel" for the government at the time the investigation was pending. As noted above, if that is so, recusal is the only appropriate action to take.

We respectfully request a hearing in this matter to determine whether or not recusal is the appropriate action.

Conclusion

Because Mr. Mendoza's rights should not be curtailed by any past investigations by Your Honor, and because he deserves a judge that would rule upon his case solely based on the facts presented, and not the lawyers who stand by his side and those lawyers' associations, the appropriate action in this matter is recusal.

Respectfully Submitted,

_____/S/_____
Ramon W. Pagan (RP5291.)
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2116 Williamsbridge Road
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(718) 993-1598

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

UNITED STATES OF AMERICA,

AFFIRMATION

-vs-

07-cr-00756

**JOSE FRANCISCO MENDOZA, et al.,
Defendants.**

-----X

RAMON W. PAGAN, an attorney duly admitted to practice law before this Court, hereby affirms under penalty of perjury:

1. I am the attorney for the above-referenced defendant, Jose Francisco Mendoza.
2. I was admitted to practice before this Court in 1978.
3. I have been handling federal criminal matters against the United States Attorney's Office for the Southern District of New York for over 20 years.
4. In or about 1996, the United States Attorney's Office for the Southern District of New York began investigating an attorney, Pasquale Stiso, for possible obstruction of justice, among other things. Upon information and belief, the Assistant United States Attorneys assigned to that investigation were John Hillebrecht and Richard Sullivan, Your Honor.
5. As a result of that investigation, Mr. Pasquale Stiso was indicted under indictment number 97-cr-00817. The lead Assistant United States Attorney on that matter was John Hillebrecht.

6. Subsequently, Your Honor, as an Assistant United States Attorney, approached Manuel A. Sanchez, Jr., with two detectives, at his office located at 2116 Williamsbridge Road, Bronx, New York; our current office, which we share with Mr. Manuel A. Sanchez, Jr. During that visit, Your Honor interrogated Mr. Manuel A. Sanchez, Jr. about his dealings with Mr. Pascuale Stiso, and, upon information and belief, threatened to have Mr. Manuel A. Sanchez, Jr. arrested if he failed to cooperate with the investigation of Mr. Pascuale Stiso.
7. Mr. Manuel A. Sanchez, Jr. was subsequently arrested and indicted under indictment number 2001-cr-00277.. Your Honor was named as the lead Assistant United States Attorney on that matter.
8. After his indictment, Mr. Manuel A. Sanchez, Jr. was represented by David Greenfield, as well as Ramon W. Pagan and Ramon A. Pagan.
9. Eventually, Assistant United States Attorneys Stephen Miller and Anuridh Bansal took over the matter, as Your Honor had left the United States Attorney's Office.
10. The matter went to trial before the Honorable Richard Casey in May of 2006, and Mr. Greenfield and Mr. Pagan were co-counsel during the trial. Upon receiving discovery prior to trial under the Jencks Act, it was discovered that Ramon W. Pagan's name appeared in several different

items, relating to interactions between Mr. Pagan and Mr. Pascuale Stiso, and Mr. Pagan's clients.

11. Mr. Manuel A. Sanchez, Jr. was acquitted by the jury.
12. In or about December of 2002, the United States Attorney's Office for the Southern District of New York executed a search warrant on the Law Office of Ramon W. Pagan then located at 888 Grand Concourse, Bronx, New York. We not aware which Assistant United States Attorneys were responsible for that search warrant or oversaw that investigation.
13. Based upon the foregoing, it is believed that Your Honor may not be impartial in your determinations of any matter for which I am counsel, as I have been the target, along with others, of investigations in criminal matter for which Your Honor was involved. Because I was an attorney associated with Mr. Pascuale Stiso and Mr. Manuel A. Sanchez, Jr., and in fact represented clients associated with Mr. Pascuale Stiso at the relevant time period, as well as Mr. Manuel A. Sanchez, Jr. for his criminal matter, we submit that Your Honor has a prejudice and/or bias against our office. We respectfully submit that such prejudice or bias will substantially affect the rights of our client, and, therefore, request that Your Honor disqualify himself from the matter.

Dated: Bronx, New York
September 20, 2007

/S/

Ramon W. Pagan (RP0592)
The Law Office of Ramon W. Pagan
2116 Williamsbridge Road
Bronx, New York 10461
(718) 993-1598
Counsel for Jose Francisco Mendoza

Case Number: 07-CR-00756 (RJS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

Jose Francisco Mendoza, et. al.,

Defendants.

Defendant's, Jose Francisco Mendoza Motion for Recusal

LAW OFFICE OF RAMON W. PAGAN
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2116 WILLIAMSBRIDGE ROAD
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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: September 21, 2007

Signature
Print Signer's Name

RAMON W. PAGAN

Service of a copy of the within

is hereby admitted.

Dated: September 21, 2007

Attorney(s) for

Please take notice

NOTICE OF ENTRY
that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT
that an order of which the within is a true copy will be presented for settlement to the HON.
on one of the judges of the within named court, at
on at M

Dated: September 21, 2007

To:

Yours, etc.
LAW OFFICE OF RAMON W. PAGAN
Attorney for Jose F. Mendoza
2116 Williamsbridge Road
Bronx, NY 10461